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IN THE
COURT OF APPEALS OF INDIANA

ALLEN BOLDEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-CR-1022
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Magistrate
Cause No. 49F10-0703-CM-33694

MAY 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Allen Bolden was convicted of resisting law enforcement, a Class A misdemeanor. (I.C. 35-44-3-3). His appeal challenges the sufficiency of the evidence to establish the necessary element of forcibly resisting, obstructing or interfering with law enforcement officers.[1]

Bolden acknowledges that in examining the sufficiency of the evidence we will neither reweigh the evidence nor redetermine the credibility of the witnesses. We look only to the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom. We will affirm unless no rational fact-finder could have found the defendant guilty beyond a reasonable doubt. *Clark v. State*, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000), *trans. denied.*

In *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993), our supreme court determined that the resisting law enforcement statute requires resistance, obstruction, or interference through the use of force. "The common denominators of these definitions [of force] are the use of strength, power, or violence, applied to one's actions." *Id.* The court found that Spangler's actions in refusing to accept process and turning and attempting to walk away were insufficient to establish the use of force.

Similarly, in *Ajabu v. State*, 704 N.E.2d 494 (Ind. Ct. App. 1998), where the defendant merely twisted and turned away in order to keep possession of his flag, the necessary force was not established.

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[1] We recommend that appellant's counsel consult Ind. Appellate Rule 22 for the proper form of citation to cases.

On the other hand, sufficient use of force was found to exist in the following circumstances: (a) where defendant gripped the steering wheel and would not let go of it when deputies tried to remove him from is vehicle, and he then tried to keep his wrists from the deputies when they attempted to handcuff him. *Bringle v. State*, 745 N.E.2d 821, 827 (Ind. Ct. App. 2001), *trans. denied*, and, (b) where defendant physically resisted leaving his house by bracing his hands against the door frame, thus requiring an officer to push him through in order to get him outside the house. *Wellman v. State*, 703 N.E.2d 1061, 1064 (Ind. Ct. App. 1998).

The lesson from these cases is that while passive resistance does not satisfy the force requirement, it is not necessary that the force be directed against the officer. It is sufficient if the accused uses force to resist, obstruct or interfere with an officer in the performance of his lawful duties.

Here, the evidence favorable to the conviction established that police stopped Bolden because there was no visible license plate on his vehicle. With Bolden outside his car, he was instructed to place his hands on the roof of the vehicle so that the police might do a pat down search. He refused to do this, and when Officer Hessong grabbed Bolden's hand to place it on the car, Bolden clenched his fist and tightened his forearm and resisted allowing his hand to be moved. He then pulled away from the officers and attempted to re-enter his car. After tazing Bolden and pulling him to the ground, the officers instructed Bolden to place his hands behind his back. Instead, Bolden tightened up his arms and kept his hands in front of his body near his waistband. The officers had

to struggle with Bolden for more than a minute before they succeeded in pulling his hands behind his back and handcuffing him.

These acts of forceful resistance by Bolden constitute more than the passive resistance referred to by the court in *Spangler*. They are sufficient to satisfy the statutory requirement of "forcibly."

The conviction is, therefore, affirmed.

RILEY, J., and MAY, J., concur.